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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,088	10/17/2003	Pascal Genini		9089

7590
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EXAMINER

WEINSTEIN, STEVEN L.

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/687,088

Applicant(s)

GENINI, PASCAL

Examiner

Steven L. Weinstein

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

The preamble of claim 1 makes a positive recitation that the claim is a method for making a pancake batter. Therefore claims 1-3 are method claims. However, the body of claim 1 does not contain any verbage to recite a positive method step in the process of making a pancake batter. Therefore, the body of claim 1, which is silent as to any method steps is inconsistent with the preamble of claim 1, which recites a method. Also, claim 3 is indefinite since it is improper to rely on a figure/drawing when the claim can be recited in words. It would also be unclear as to how the recited method of claim 1 specifically relates to the accompanying drawing.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulf et al (6,758,592) in view of Wilson (4,230,238), Wilson (4,397,879), Keller (3,542,190), Tooke (2,828,858) and Long (3,144,931), further in view of Morley (1,744,328), Benisti (4,388,839) and Collins (2,010,534).

As noted above, claim 1 is a generic method reciting a method of making pancake batter. Claim 2 further recites the method including removing a lid to a container, introducing milk to a marker, introducing flour to a marker, adding eggs and salt and shaking the container to mix the ingredients. Claim 3 does not further add a

positive method step. Note, too, that a method claim reciting method steps should generally stand on its own. That is, a method claim should not rely on the apparatus for patentability. It is the manipulative steps of the method that is judged for patentability. Thus, in the present application, it is the steps of claim 2, e.g., the introducing steps, shaking, etc, devoid of the structure, which are examined for patentability. To expedite prosecution, the claims will be examined in this context. Thus, Wulf discloses a method wherein a recipe such as a batter is made by introducing into a vessel the various ingredients that make up the batter recipe wherein the ingredients are added to corresponding marker levels on the vessel. Wulf et al discloses the recipes can include batters, powdered drinks, milk shakes, etc. and the markings associated with the mixing vessel indicate the levels for the ingredients which make up the recipe. Thus, Wulf et al teaches applicants problem and solution of providing a receptacle that allows one to make a recipe such as a batter without needing a book or additional measuring devices, by providing indicator levels associated with the vessel. See, for example, the example shown in figure 6 of Wulf et al. Wulf et al discloses that after the ingredients are added, the vessel cover is placed on the vessel and the ingredients are shaken by an internal agitator. The claims (specifically claim 2), differs from Wulf et al in the particular step of mixing. Wulf et al discloses mechanical agitating interiorly of the vessel, but the two Wilson references, Keller, Tooke and Long disclose shaking the vessel itself and to modify Wulf et al and substitute one conventional agitating step for another conventional agitating step would therefore have been obvious. In regard to the specific ingredients and order of their addition, this would have been an obvious result effective variable,

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routinely determinable. Applicant is obviously not the inventor of a pancake composition. In fact, Wilson ('238) discloses a composition wherein a prepared mix, water and eggs are added to the vessel. Wilson ('879) discloses that the dry mix can even include flour, egg, salt, etc. Morley, Benisti and Collins are relied on as further evidence that it was well established to provide vessels with recipes and their ingredients with associated marker fill lines so that a consumer can make the particular recipe without any additional measuring utensils which, as noted above, is applicants objective as well.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794